

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

METROPOLITAN TRANSPORTATION
AUTHORITY, *et al.*,

Plaintiffs,

v.

SEAN DUFFY, in his official capacity as
Secretary of the United States Department
of Transportation, *et al.*,

Defendants.

Civil Action No. 1:25-cv-1413-LJL

Hon. Lewis J. Liman

**BRIEF OF AMICI CURIAE ENVIRONMENTAL DEFENSE FUND, NATURAL
RESOURCES DEFENSE COUNCIL, CIVITAS, NEW YORK LEAGUE OF
CONSERVATION VOTERS, BIKE NEW YORK, REINVENT ALBANY, MOVE NY,
PARTNERSHIP FOR NEW YORK CITY, TRI-STATE TRANSPORTATION
CAMPAIGN, OPEN PLANS, EMPOWERNJ, BLUEWAVENJ, CLEAN WATER
ACTION, BIKE HOBOKEN, OUR REVOLUTION NJ, BIKE NORTH BERGEN,
TURNPIKE TRAP COALITION, EVERGREEN, HUDSON COUNTY COMPLETE
STREETS, WE ACT FOR ENVIRONMENTAL JUSTICE, STREETSPAC,
TRANSPORTATION ALTERNATIVES, NEW YORK PUBLIC INTEREST RESEARCH
GROUP, MICHAEL B. GERRARD AND SAM SCHWARTZ**

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PRELIMINARY STATEMENT

In the mere months since the onset of the Central Business District (“CBD”) Tolling Program (the “Program”), New Yorkers have already begun to see its benefits: there is less congestion, reducing travel times in the CBD and the region; delivery trucks, buses, and emergency vehicles are moving more rapidly and predictably; the MTA is reporting reduced vehicle miles traveled (“VMT”), which experts correlate to reduced air pollution; and there is increased foot traffic in the CBD and even Broadway has higher attendance rates. However, Defendant U.S. Department of Transportation Secretary Sean P. Duffy threatens to undo all this progress – to snatch defeat from the jaws of victory – by demanding that Governor Kathy Hochul and Plaintiffs Metropolitan Transportation Authority (“MTA”), Triborough Bridge and Tunnel Authority (“TBTA”), New York State Department of Transportation (“NYSDOT”) and New York City Department of Transportation (“NYCDOT”) (together, the “Sponsor Plaintiffs”) end the CBD Tolling Program.

Defendant Duffy is trying to force the Sponsor Plaintiffs to make an impossible choice between two undesirable outcomes. If they agree to Defendants’ demands, New Yorkers, New York State and the greater tri-state area will lose out on critical environmental and congestion improvements precipitated by the Program, as well as the Program’s revenue earmarked for critical transit infrastructure improvements. If she refuses, Defendant will withhold crucial federal approvals and funding for city-wide (and possibly state-wide) projects.

New York – America’s largest and most densely populated city – has long suffered from some of the nation’s worst traffic congestion and persistent air pollution: in May 2024, traffic speeds averaged around 4.5 miles per hour, the pace of a leisurely jog. However, it took time to galvanize support for congestion pricing.

Initially proposed by Columbia University Professor William Vickery in the 1950s, congestion pricing was included in a plan to place tolls on the East River Bridges as part of the New York State Implementation Plan required under the Clean Air Act (*See, Friends of the Earth v EPA*, 499 F.2d 1118 (2d Cir. 1974)). The program was scuttled by a 1977 act of Congress.¹

In 1980, Mayor Ed Koch tried to promote congestion pricing twice, initially proposing to toll all single-occupant vehicles entering Manhattan. This was overturned in litigation.² In an effort to achieve air quality standards, Mayor Koch proposed to charge ten dollars for every vehicle entering Manhattan south of 59th Street in 1987.³ This plan stalled due to opposition by motorists and others.⁴

In 2007, Mayor Michael Bloomberg's sustainability plan specifically proposed a three-year congestion pricing pilot program, which would have applied to all private autos and trucks entering Manhattan below 86th Street during business hours Monday through Friday.⁵ The New York City Council approved a scaled-down version of this plan in 2008 but the State Assembly failed to advance enabling legislation.⁶

In 2018, a blue-ribbon advisory panel convened by then-Governor Andrew Cuomo concluded that New York's traffic congestion ranked second worst among cities in the United

¹ For a detailed history of congestion pricing policy in New York, *see* Ben Adler, "New York's Long Road to Congestion Pricing", Works in Progress, (May 17, 2024) <https://worksinprogress.co/issue/new-yorks-long-road-to-congestion-pricing/#:~:text=The%20May%201977%20amendment%20to,such%20as%20improved%20public%20transportatio> n. (last visited May 12, 2025).

² *See Automobile Club v. City of New York*, 1981 N.Y. Misc. LEXIS 3518 (Sup. Ct. N.Y. Cnty. May 28, 1981).

³ *See* David Dunlop, *Koch Backs \$10-a-Day Fees For Vehicles to Reduce Pollution*, N.Y. Times, Aug. 4, 1987, at B1. <https://www.nytimes.com/1987/08/04/nyregion/koch-backs-10-a-day-fees-on-vehicles-to-reduce-pollution.html> (last visited May 12, 2025).

⁴ *See* Sam Schwartz, Gerrard Soffian, Jee Mee Kim, & Anne Weinstock, *A Comprehensive Transportation Policy for the 21st Century: A Case Study of Congestion Pricing in NYC*, 17 N.Y.U. Env't L.J. 580, 592-93 (2008).

⁵ *See* The City of New York, *PlaNYC: A Greener, Greater New York* 72 (2007).

⁶ *See* Schwartz, *supra* 4, at 594-95.

States and that the subways were suffering from years of neglected maintenance due to years of insufficient funding, resulting in chronic breakdowns and delays. The panel recommended, among other things, a phased implementation of a zone-pricing system for all vehicles entering an area almost identical to the CBD delineated in the CBD Tolling Program,⁷ cementing the Governor's previous commitment to congestion pricing.⁸

Finally, in 2019, the New York State Legislature passed the Traffic Mobility Act, requiring a tolling system be designed to reduce congestion and provide a reliable source of funding for necessary transit capital investments.⁹ After five years of planning, analyses, public engagement, program revisions, and expenditures of over half a billion dollars, New York's CBD Tolling Program infrastructure was installed and ready to be activated on June 30, 2024.¹⁰ Following some political hurdles, the Program officially began in January 2025.¹¹

Despite the challenging road to implementation, New York's CBD Tolling Program is on track to be an outstanding congestion pricing scheme – rivaling those seen in several other major international cities – improving the quality of life of CBD residents and the region as a whole while raising necessary funds for the transit improvements. As a result, opinions have started to

⁷ See *Fix NYC Advisory Panel Report* 4-6 (2018).

⁸ See Marc Santora, *Cuomo Calls Manhattan Traffic Plan an Idea 'Whose Times Has Come'*, N.Y. Times, (Aug. 13, 2017), at A1 <https://www.nytimes.com/2017/08/13/nyregion/cuomo-rethinks-opposition-to-tolls-to-ease-manhattan-traffic.html>. (last visited May 12, 2025).

⁹ *Central Business District Tolling Program: Congestion Pricing Reduces Traffic, Improves Air Quality, and Invests in Mass Transit*, MTA, <https://www.mta.info/document/91486>

¹⁰ Eyewitness News ABC7, *Congestion pricing in New York City indefinitely postponed*, ABC7ny.com, (June 5, 2024) <https://abc7ny.com/post/congestion-pricing-nyc-kathy-hochul-start-delay/14912968/> (last visited May 12, 2025).

¹¹ Winnie Hu and Ana Ley, *Welcome to the Congestion Zone: New York Toll Program is Set to Begin*, NY Times, Jan. 4, 2025, <https://www.nytimes.com/2025/01/04/nyregion/congestion-pricing-nyc.html> (last visited May 12, 2025).

shift to support the Program, especially among those who directly experience its benefits.¹²

Without legal justification, Defendants threaten to undo all of this.

INTEREST OF THE AMICI

Amici are 23 organizations and 2 individuals committed to protecting the safety and well-being of residents in and around New York City, particularly by way of environmental, transit, and civic advocacy.¹³

The Environmental Defense Fund is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems and has worked for decades to protect human health and the environment for people and communities in New York City.

The Natural Resources Defense Council, incorporated as a non-profit organization under the laws of New York State in 1970, has more than 35,000 members in New York and has advocated for more than five decades for improved public transportation, clean air, and a sustainable economy in the nation's largest city.

CIVITAS is an organization of citizens founded in 1981, dedicated to improving neighborhood quality of life in Manhattan's Upper East Side and East Harlem by promoting environmentally conscious development, access to efficient public transit, and policies that improve the quality of urban life in New York City neighborhoods.

¹² See Philip Marcelo, *NYC congestion pricing has more support than ever as Trump deadline looms, new poll finds*, Associated Press, (Mar. 10, 2025) <https://www.nbcnewyork.com/news/local/nyc-congestion-pricing-support-grows/6165502> (last visited May 12, 2025).

¹³ Amici state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The New York League of Conservation Voters is a non-partisan, statewide environmental organization in New York that fights for clean water, healthy air, renewable energy, and open space.

Bike New York promotes cycling as a practical, sustainable, and healthy means of transportation and recreation in New York City that has long supported congestion pricing for its street safety benefits and potential to create additional space for bikeways and traffic calmed streets. The city's density makes it ideal for expanding use of bicycles for practical travel and to reach mass transit stations.

Reinvent Albany advocates for transparent and accountable New York government, including more open and better-governed state authorities.

Move NY is a region-wide grassroots campaign that seeks to build support for a master transportation plan for New York City and aims to bring faster, safer, fairer transportation to all New Yorkers.

The Partnership for New York City is a nonprofit organization whose members are business leaders and major employers who are dedicated to maintaining New York's status as a global center of commerce, economic opportunity, and innovation.

The Tri-State Transportation Campaign is a non-profit organization using data and policy analysis, along with strategic media outreach to promote sustainable transportation, equitable planning policies and practices, and strong communities in the New York City metro area.

Open Plans is a nonprofit whose mission is to promote a people-first street culture that prioritizes community, active mobility, and connection. Open Plans uses grassroots

advocacy and policy changes to help transform how people experience New York City's public spaces.

EmpowerNJ is a coalition of 140 environmental, civic, faith, and progressive organizations that advocates for prohibiting new fossil fuel projects and reducing greenhouse gas emissions in New Jersey. It regularly participates in judicial, administrative, and legislative proceedings in New Jersey.

BlueWaveNJ is a progressive grassroots organization seeking solutions through community. Its working groups, conferences, marches, and special events have mobilized voters and coalitions to demand positive change from legislators at the state and federal level in such critical areas as health care, the economy, marriage equality, the environment, education, electoral reform and sensible gun control.

Clean Water Action's mission is to develop strong community-based environmental leadership and coalition partners; bring together diverse constituencies to work cooperatively for clean, safe and affordable solutions to water, waste, toxics and energy issues that address public health, environmental, consumer and community problems; and make the democratic process more accessible, inclusive and effective for people most affected and with an eye towards environmental, social, civic and economic justice. For over 40 years, Clean Water Action has conducted innovative community-based and statewide campaigns that have yielded long term protections in New Jersey. Since 1982, Clean Water Action has staffed and operated offices throughout New Jersey with 1 million nationwide and 150,000 New Jersey members and 75,000 email subscribers.

Bike Hoboken strives to make Hoboken, New Jersey more bike-friendly and our streets safer for everyone.

Our Revolution NJ is a progressive political advocacy group focused on four things in New Jersey: Abolishing the county line, police accountability, climate change, and Medicare for all. It works to support climate projects including increasing the performance and usage of public transit as a key step in addressing climate change.

Bike North Bergen is dedicated to advocacy efforts for safer streets in the Township of North Bergen, New Jersey and believes that pedestrians, people on bicycles, and other active modes of transportation and micro-mobility need robust infrastructure to move around safely in the densest metro-area in the United States.

Turnpike Trap Coalition is a coalition of grassroots organizations from around New Jersey standing together to stop the proposed widening of the Newark Bay Hudson County extension of the New Jersey Turnpike.

Evergreen is a Washington D.C.-based nonprofit climate advocacy organization founded in 2020, leading the fight to put bold climate action at the top of America's agenda and to implement an all-out mobilization to defeat climate change and create millions of good union jobs in a just and thriving clean energy economy.

Hudson County Complete Streets' ("HCCS") mission is to improve connectivity and transportation equity in Hudson County by advocating for safe streets, pedestrian and cycling infrastructure, and access to transit in each community. HCCS believes a more connected Hudson County that is safe for pedestrians, cyclists, scooters, skaters, people in wheelchairs, and other vulnerable road users will promote the health and well-being of our more than 750,000 residents by providing people of all ages and abilities with more mobility options.

WE ACT for Environmental Justice is a community-based organization, founded in 1988, in West Harlem that fights environmental racism – racial discrimination in

environmental policymaking, enforcement of regulations and laws, and targeting communities of color for toxic waste disposal and siting of polluting industries.

StreetsPAC is a New York City-based political action committee dedicated to electing candidates who support pro-safe streets and pro-public transit policies, and to advancing such policies through related advocacy work.

Transportation Alternatives leads by using a combination of neighborhood-level grassroots organizing and citywide advocacy to push for changes in public policy, street design, enforcement, and resource allocation that transform New York City's streets for the better.

New York Public Interest Research Group engages New Yorkers in public education, research, and advocacy campaigns to produce policies that strengthen democracy, enhance the rights of consumers and voters, support public mass transit, and protect the environment and public health.

Michael B. Gerrard is Andrew Sabin Professor of Professional Practice at Columbia Law School and Faculty Director of the Sabin Center for Climate Change Law.

Sam Schwartz is a nationally recognized expert in the fields of traffic engineering and congestion pricing. He served as New York City Traffic Commissioner from 1982 to 1986 and as the City Department of Transportation's First Deputy Commissioner and Chief Engineer from 1986 to 1990.

Amici represent broad and diverse interests across the region and are united by their strong commitment to ensuring the continuation of this vital program and realizing the essential health, safety and economic benefits for millions of people across the region provided by the CBD Tolling Program.

SUMMARY OF ARGUMENT

Amici submit this brief in support of the Program that was carefully developed through years of extensive environmental analysis and public input and has already begun to effectively address the intractable problems of regional traffic congestion and related poor air quality in New York City. Defendant Duffy's April 21, 2025 letter (ECF 87-10) demanding that Governor Hochul and the Sponsor Plaintiffs abandon the program or lose out on critical approval and funding for city projects threatens this progress, and the health and accessibility of the city. This Court should grant the relief requested by Plaintiffs for the following three reasons so that the MTA/TBTA may operate the Program without threats that Sponsor Plaintiffs will lose critical federal funding.

First, contrary to Defendants' post-hoc assertions, the CBD Tolling Program benefits most low- and moderate-income commuters. Defendants based their argument on the false premise that these commuters typically drove into the Manhattan CBD and have now been forced to abandon their vehicles. However, most of these commuters never relied on cars. In fact, many of the lowest-income commuters ride the bus and those commuters have experienced some of the most dramatic reductions in commute times since the introduction of the CBD Tolling Program.

Second, the MTA has already reported a 10% reduction in VMT since the introduction of the CBD Tolling Program. Experts correlate a reduction in VMT to a reduction in air pollution. Case studies from other cities around the world that have implemented similar congestion pricing schemes have found that those cities have also experienced a substantial reduction in air emissions and a similar reduction is expected for the CBD Tolling Program.

Third, the CBD Tolling Program has already been an unmitigated success for the region reducing congestion and travel times and increasing foot traffic and Broadway attendance. The

Defendants’ threats to suspend approval and/or funding of other transportation projects if the CBD Tolling Program remains in place would have dire consequences for millions of people in New York City and across the tri-state region. Without the completion of these federally funded and approved projects, regional residents can expect more congestion, longer commute times, increased air pollution, less reliable mass transit and an overall diminished quality of life.

ARGUMENT

I. Contrary to Defendants’ Assertions, Most Low- and Moderate-Income Commuters Benefit from the CBD Tolling Program.

In various press reports, Defendant Duffy has criticized the CBD Tolling Program as “warped”—intended to price the poor out of their cars.¹⁴ He has also railed against the program stating that “President Trump and I will not sit back while Governor Hochul engages in class warfare and prices working-class Americans out of accessing New York City.”¹⁵

This argument is based on the false premise that before the CBD Tolling Program, most low- and middle-income commuters drove into the Manhattan CBD and are now forced to rely instead on the New York City transit system. This was never true, in part because most lower income and many moderate income New Yorkers don’t even own cars.¹⁶

¹⁴ Taylor Walters, *DOT Secretary Sean Duffy slams Gov. Hochul’s NYC congestion pricing as ‘warped’ war on the middle class*, NY Post, (Apr. 26, 2025) <https://nypost.com/2025/04/26/us-news/dot-sec-duffy-slams-hochuls-congestion-pricing-as-a-dem-war-on-the-poor/> (last visited May 12, 2025).

¹⁵ Erik Uebelacker, *Trump administration ramps up threats against NYC congestion pricing program; Transportation Secretary Sean Duffy gave New York until May 21 to ice the toll or face ‘serious consequences’*, (Apr. 22, 2025), <https://www.courthousenews.com/trump-administration-ramps-up-threats-against-nyc-congestion-pricing-program/> (last visited May 12, 2025).

¹⁶ See Irene Lew, Debipriya Chatterjee, Emerita Torres, *What Does Congestion Pricing Mean for Outer-Borough New Yorkers in Poverty? An Updated CSS Analysis*, Community Service Society, (Mar. 14, 2022) <https://www.cssny.org/news/entry/congestion-pricing-outer-borough-new-yorkers-poverty-data-analysis#:~:text=Only%20two%20percent%20of%20the,or%20bike%20to%20their%20jobs.> (last visited May 12, 2025).

In fact, the vast majority of low- and middle-income commuters have always used, and continue to use, mass transit to access the CBD. According to the Final Environmental Assessment, prior to implementation of the CBD Tolling Program, only 9% of low-income commuters drove into Manhattan on average. The rest either walked, biked or used mass transit, with the vast majority (79%) using transit.¹⁷ Indeed, for every one working New Yorker in poverty who will regularly face a congestion pricing charge, approximately 50 workers commute via public transit and will benefit from the program's revenues.¹⁸

And to a greater degree than subway riders, the lowest income commuters disproportionately take the bus. In a 2017 study, the average income of bus commuters was well below that of subway commuters and employed New Yorkers as a whole. In addition, 75% of bus riders were people of color.¹⁹ Furthermore, low-income commuters generally have longer commute times and spend more time on transit than higher income commuters.²⁰

Interestingly, bus commuters have been some of the largest early beneficiaries of the CBD Tolling Program. While the Program is reducing commute times overall, bus riders have experienced some of the most dramatic commute time reductions. According to the MTA, express buses are traveling 21% faster on their routes leading into and within the CBD. MTA data from March 2025 shows that there are 23% fewer trips on express buses that are delayed 10 minutes or more. Further, local bus speeds have increased by an average of 3% within the CBD, with some routes increasing by as much as 7%. (ECF 85 at 13).

¹⁷ U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment ("EA"), April 2023, Table 17-9, p. 17-22, <https://new.mta.info/project/CBDTP/environmental-assessment>. (last visited May 12, 2025).

¹⁸ See *Lew supra* 16.

¹⁹ *The Other Transit Crisis: How to Improve the NYC Bus System*, NYC Comptroller Brad Lander, (Nov. 17, 2017) https://comptroller.nyc.gov/reports/the-other-transit-crisis-how-to-improve-the-nyc-bus-system/#_ednref5 (last visited May 12, 2025).

²⁰ *Transportation Equity Atlas*, Pratt Center for Community Development, https://prattcenter.net/our_work/transportation_equity_atlas (last visited May 12, 2025).

In addition to benefits for low- and middle-income commuters from the likely reduction in air emissions described below, and the overall transit improvements that will result from the investments made possible by revenue from the CBD Tolling Program, the large number of lower income commuters that take the bus are already significantly benefiting from the Program.

Finally, among those benefiting most directly from the congestion pricing program are motor vehicle drivers themselves. By discouraging unnecessary motor vehicle travel into the congestion zone, the tolling program has reduced commute times for those who continue to drive into the CBD and made their travel times more predictable.²¹ Exemptions and discount toll plans are also available for eligible vehicles transporting persons with disabilities and for the small percentage of low-income drivers who regularly commute into the CBD, respectively.²² In short, implementation of the CBD Tolling Program is demonstrating that this strategy is broadly beneficial to all travelers and the region as a whole.

II. The CBD Tolling Program Is Likely Resulting in Reductions of Air Emissions That Have Not Yet Been Measured or Modeled.

In addition to the well documented reductions in congestion, horn honking, and traffic accidents resulting from the CBD Tolling Program, the program is also likely reducing harmful air emissions. After only a few months of program implementation, one study is already suggesting that the CBD Tolling Program has resulted in some air emission reductions.²³ And this study may even underestimate the air emissions reductions secured so far under the CBD

²¹ See Press Release, *New Congestion Relief Zone Data Captures Magnitude of Faster Commutes for Drivers and Bus Riders, Fewer Vehicles and Surging Express Bus Ridership*, MTA, (Jan. 29, 2025) <https://www.mta.info/press-release/new-congestion-relief-zone-data-captures-magnitude-of-faster-commutes-drivers-and-bus> (last visited May 12, 2025).

²² See Congestion Relief Zone Toll: Discounts and Exemptions, MTA <https://www.mta.info/fares-tolls/tolls/congestion-relief-zone/discounts-exemptions> (last visited May 12, 2025).

²³ See Cody Cook et al., *The Short-Run Effects of Congestion Pricing in New York City*, NBER (Mar. 17, 2025) referenced in ECF 85 p. 13 n.28.

Tolling Program for two reasons: first, the program is materially reducing vehicle miles travelled (VMT) and reductions in VMT have been closely correlated with reductions in air emissions; and second, programs similar to the CBD Tolling Program in other cities have been shown to reduce both VMT and air emissions.

A. Significant CBD Program Reductions in VMT Are Likely Also Materially Reducing Air Emissions.

The MTA is reporting “a 10% reduction in VMT by all vehicles in the CBD from January to mid-March of 2025 compared to the same period in 2024.” (ECF 85 at 12).

Transportation experts have long recognized that there is a “positive correlation between vehicle miles travelled (VMT) and air pollutant emissions.”²⁴ Simply put, as VMT increases, so do emissions and as VMT decreases, so do emissions.²⁵

As one study concluded, even a 1% increase in VMT per-capita – particularly in denser urban areas – led to a statistically significant increase in emissions of both particulate matter (PM) 2.5 and nitrogen oxides.²⁶ Conversely, lower per-capita VMT generally results in a direct reduction of these same air pollutants.²⁷

²⁴ Nicole S. Ngo et. al., *The Impact of Urban Form on the Relationship Between Vehicle Miles Traveled and Air Pollution*, 28 Transp. Rsch. Interdisc. Persp. 101288, 1 (2024) (citing Kevin Fang & Jamey Volker, *Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled*, U.C. Davis: Nat'l. Ctr. For Sustainable Transp. 4 (2017), Jordan Carrol-Larson & Arthur J. Caplan, *Estimating the Effectiveness of a Vehicle Miles Travelled Tax in Reducing Particulate Matter Emissions*, 52 J. of Env't. Plan. & Mgmt. 315, 315 (2009), Marshall Lindsey et. al., *The Effect of Residential Location on Vehicle Miles of Travel, Energy Consumption and Greenhouse Gas Emissions: Chicago Case Study*, 16 Trans. Rsch. Part D. Trans. & Env't. 1, 1 (2011)).

²⁵ Currey, Ganson, Miller, & Fesler, *Vehicle Miles Traveled (VMT) Impacts on the Environment, Human Health, and Fiscal Health*, State Smart Transp. Initiative (2015) (<https://ssti.us/wp-content/uploads/sites/1303/2015/06/Ganson-VMT-Impacts-on-the-Environment-Human-Health-and-Fiscal-Health-Working-Paper-1.pdf>) (last visited May 12, 2025).

²⁶ Ngo et. al., *supra* 23 at 6.

²⁷ *See id*; *see generally*, Larson & Caplan, *supra* 23.

For example, that same study noted that the reduction in per-capita VMT resulting from COVID-19 pandemic-related stay-at-home orders led to a 3.3% reduction in average daily NO₂ emissions and 3.1% reduction in average daily carbon dioxide emissions.²⁸

Furthermore, one study indicated that placing a direct tax on VMT, with the goal of reducing per-capita VMT, also results in a statistically significant reduction in air pollutant emissions.²⁹ This 2009 study indicated that a VMT tax rate placed on passenger cars and light-duty trucks in the Houston area, by leading to a reduction in per-capita VMT, could result in a reduction of PM2.5 emissions anywhere between 7% and 11% annually.³⁰ Researchers have concluded that, at least for the foreseeable future, reducing VMT will provide the most substantial reduction in air emissions when trying to reach certain state's desired emissions targets.³¹ As such, there is strong scientific evidence of a direct link between VMT and air pollutant emissions.³²

Therefore, the material reductions in VMT in the CBD as a result of CBD Tolling Program implementation are likely resulting in similar material reductions in air emissions in the CBD.

B. Material Congestion, VMT, and Air Emissions Reductions in Other Cities After Implementation of a Cordon Congestion Pricing Program Indicate That a Significant Reduction in Air Emissions Is Likely Due to Implementation of the CBD Tolling Program.

Congestion pricing schemes have been implemented in several major cities around the world, including Singapore, Stockholm, London, and Milan.³³ Studies analyzing

²⁸ Ngo et. al., *supra* 23 at 6.

²⁹ See Larson & Caplan, *supra*, at 315.

³⁰ *Id.* at 336, 339.

³¹ Fang & Volker, *supra*, at 3-4.

³² See *id.*; see also Ngo et. al., *supra*, at 1, 6.

³³ Elisabeth T. Isaken & Bjørn G. Johansen, *Congestion Pricing, Air Pollution, and Individual-Level Behavioral Responses* 1 (Univ. of Oslo, Dep't of Econ., Working Paper Mem., No. 01/2021 2021) (last visited May 12, 2025)

each of these programs have found that they have resulted in an overall reduction of ambient air pollution in the implementing cities.³⁴

For example, Defendants' website describing the environmental benefits of congestion pricing states that the program in Singapore has led to an estimated 176,400-pound reduction in carbon dioxide (CO₂) emissions per day which would result in a reduction of almost 29,000 metric tons per year.³⁵

Stockholm, Sweden has been exacting a toll on most vehicles entering the city center since 2007, and studies have shown that this program has significantly reduced vehicle-related air pollution.³⁶ Specifically, one study found that nitrogen dioxide (NO₂) and particulate matter (PM₁₀) levels decreased by 15-20% and 10-15% respectively from pre-congestion pricing implementation to 2024, when the study was conducted.³⁷ In addition, the congestion toll resulted in a decrease in childhood asthma hospitalizations by nearly 50%.³⁸

Similar improvements in overall air quality have been seen in London due to the city's "Ultra Low Emission Zone" (ULEZ), a program akin to congestion pricing.³⁹ London's ULEZ expands across the city, and into the outer boroughs, and requires that certain vehicles not

³⁴ See *Id* (see also Emilia Simeonova, et. al., *Congestion Pricing, Air Pollution and Children's Health* 3 (Nat'l. Bureau of Econ. Rsch. Working Paper No. 24410, 2019); see also, *London-Wide Ultra Low Emission Zone – One Year Report 4*, Greater London Auth. (2025) (<https://www.london.gov.uk/programmes-strategies/environment-and-climate-change/environment-and-climate-change-publications/london-wide-ultra-low-emission-zone-one-year-report>) (last visited May 12, 2025); see also, *Taking Charge of Traffic Congestion/Lessons From Around The Globe-Singapore: A Pioneer in Taming Traffic*, Env't. Def. Fund. (2006); see also Léonard Moulin & Valerie Maria Urbano, *Evaluating the effectiveness of two Milan's congestion limitation policies: charge increase and vehicle type limitation*, French Inst. Of Demographic Stud. (2024) (<https://hal.science/hal-04701019v1/document>) (last visited May 12, 2025).

³⁵ See *Congestion Pricing: Environmental Benefits*, U.S. Dep't of Transportation https://ops.fhwa.dot.gov/congestionpricing/resources/enviro_benefits.htm#:~:text=Singapore's%20congestion%20pricing%20scheme%20prevents,emissions%20in%20its%20central%20area. (last visited May 12, 2025).

³⁶ Simeonova, *supra*, at 3.

³⁷ *Id.*

³⁸ Patrick Ercolano, *Study: Stockholm traffic tax helps kids in Sweden breathe easier-Decreases in air pollution lead to dramatic drop in asthma attacks among young children*, John Hopkins University, <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/> (last visited May 12, 2025).

³⁹ *London-Wide, supra*, at 7.

meeting the city's emission standards pay a daily charge in order to drive within the zone.⁴⁰ In the first year since expanding the reach of the zone, roadside NO₂ levels in outer London were averaging 4.8% lower than expected without the expansion.⁴¹ Beyond the expansion zone, in 2024, reports showed that harmful NO₂ concentrations were 27% lower across all of London and 54% lower in central London than they would have been without the ULEZ.⁴² Importantly, this study also pointed out that the ULEZ program resulted in an estimated 80% reduction in the number of people being exposed to "illegal" levels of pollution, pursuant to the UK's air quality standards, in London's most "deprived communities."⁴³

Finally, the city of Milan has also seen positive impacts on overall air pollution levels following its implementation of a congestion charge for vehicles entering a particular zone in the city center beginning in 2012.⁴⁴ One study found that, just within the first year of implementation, Milan saw an 18% reduction in particulate matter and a 35% reduction in CO₂ in the charging zone.⁴⁵

The success of these cities' programs demonstrates that congestion pricing schemes have a statistically significant impact on lowering air pollutant levels and achieving cleaner air overall.⁴⁶ Furthermore, studies have shown that investments in public transit can reduce air emissions of CO₂, NO_x and particulate matter since subways, buses and rail move people with less pollution per passenger than auto travel.⁴⁷ It is reasonable to believe that if the

⁴⁰ *Ultra Low Emission Zone*, Trans. For London, <https://tfl.gov.uk/modes/driving/ultra-low-emission-zone> (last visited May 12, 2025).

⁴¹ *London-Wide*, *supra*, at 6.

⁴² *Id.* at 7.

⁴³ *Id.*

⁴⁴ Moulin & Urbano, *supra* at 2.

⁴⁵ *Id.* at 7 (citing Paolo Beria, *Effectiveness and Monetary Impact of Milan's Road Charge, One Year after Implementation*, 10 Int. J. Sustainable Trans. 657 (2016)).

⁴⁶ See Isaken & Johansen, *supra* at 37-38.

⁴⁷ *How public transport reduces city air pollution* (Apr. 22, 2025), <https://www.clarity.io/blog/how-public-transport-reduces-city-air->

CBD Tolling Program is allowed to continue it will also significantly reduce air emissions over time.

III. Both Defendants' Demand That the CBD Tolling Program Stop and Their Threat to Suspend Project Approval and Funding if the Program Continues Could Have Dire Consequences for Millions Region-Wide.

In his April 21 letter (ECF 87-10), Defendant Duffy gave Plaintiffs and New York Governor Hochul a Hobbesian choice: abandon a program that is improving the lives of millions throughout the region or suffer a set of punishments that could have dire consequences not just for New York City but for all of New York State and the entire tri-state region. The letter called for the MTA to stop the CBD Tolling Program by May 21 or, if not, suffer several possible punishments that would have the effect of halting federally approved or funded transportation projects in Manhattan. If the Program continued after imposition of those punishments, Defendant Duffy threatened additional retribution for failure to obey, including withholding federal approval and funding for projects City- and, ultimately, State-wide. (ECF 87-10 p. 3)

As stated in the declaration of Allison L. C. de Cerreño, Ph.D. (ECF 85), and the numerous studies and press reports summarized therein, the early data indicate that the CBD Tolling Program is a success for travelers and residents region-wide, not just for lower- and middle-income commuters: Congestion, travel times, vehicle miles traveled (and likely associated air emissions), horn honking, and car accidents are all down both in the CBD and in the surrounding area. Not only are millions of travelers benefiting all over the tri-State region but so are pedestrians, bicycle riders, residents and visitors. Remarkably, this program didn't

pollution#:~:text=By%20investing%20in%20public%20transportation,emissions%20that%20harm%20respiratory; *Public Transportation's Role in Responding to Climate Change*, U.S. Dep't of Transportation, (Jan. 2010), <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf> (last visited May 12, 2025).

just slow what had been the inexorable growth of regional congestion and its attendant ills, it actually is reversing that trend and reducing congestion and its multiple daily assaults region-wide.

These immediate, short term benefits are in addition to the longer-term benefits that will be achieved through the investments planned by the MTA to be funded by Tolling Program revenue. These include capital projects to make the transit system more accessible to differently abled travelers, cleaner by the purchase of more electric buses, and faster and more reliable through improvements and upgrades to the nearly century old subway signaling system – all benefiting the entire region.⁴⁸

One of the many benefits of a more livable and enjoyable CBD is that more people want to spend more time there. While congestion and related impacts are being reduced, attendance at Broadway shows and foot traffic in and visits to the CBD are all up since CBD Tolling Program implementation.⁴⁹ This has resulted not in the economic doom loop predicted by Defendants but in increased economic activity.

If the CBD Tolling Program were rescinded or discontinued – whether due to capitulation to Defendants’ threats or otherwise – those benefits that were realized almost immediately after Program implementation will be lost just as quickly: congestion, travel times, vehicle miles traveled, and even horn honking will increase along with all of their related

⁴⁸ See *Congestion Pricing Makes for Better Transit*, MTA, (Mar. 19, 2025) <https://www.mta.info/fares-tolls/tolls/congestion-relief-zone/better-transit#:~:text=Congestion%20Relief%20Zone%20toll%20revenue,Improvement%20Program%20maintained%20by%20NYMTC> (last visited May 12, 2025).

⁴⁹ Barbara Russo-Lennon, *Bright highlights: Broadway seeing more foot traffic, bigger audiences thus far in congestion pricing era*, AMNY, (Feb. 19, 2025) <https://www.amny.com/news/broadway-foot-traffic-audiences-congestion-pricing-era/> (last visited May 12, 2025); Caroline Spivak, *Business foot traffic is up within the congestion pricing zone*, Crain’s New York Business, (Feb. 5, 2025), <https://www.crainnewyork.com/transportation/congestion-pricing-zone-business-foot-traffic> (last visited May 12, 2025).

detriments, including increased costs due to wasted time, increased air pollution, increased aggravation from horn honking and even increased traffic accidents. Similarly, related economic benefits might also be lost: Broadway attendance, foot traffic and associated economic activity could possibly decrease. Rescinding the program would also be a blow to the large number of area residents who have come to support it based on their positive experience of its benefits.⁵⁰

Furthermore, delaying, deferring or even, ultimately, canceling the longer-term improvements that will be financed with CBD Tolling Program revenues will deny the region the quality of life and related economic improvements that would have been realized had the investments been funded. This will have significant consequences for millions of people: commutes will be longer and more frustrating. Time that they would have spent with family, friends or loved ones would now be wasted sitting in traffic or on a delayed subway train. Worse still, many travelers may not even be able to get to certain locations because they could not access the system.

The suspensions of project approvals and funding threatened by Defendant Duffy in his April 21 letter would likewise have dire consequences. The impacts to transportation project development and financing are laid out in the declarations of Kevin Willens (ECF 84), Janet Ho (ECF 88) and William Carry (ECF 86). If implemented, these cuts would significantly impact individual lives, in addition to the fiscal condition of the MTA/TBTA, the City and the State. Although perhaps smaller in scale, these threats are reminiscent of past efforts by federal officials to withhold funding for the City.⁵¹ Like those prior actions, if these threats were to be

⁵⁰ Alecia Reid, *6 in 10 say they want NYC congestion pricing to continue, new poll finds*, (CBS News, Feb. 5, 2025) <https://www.cbsnews.com/newyork/news/new-york-city-congestion-pricing-morning-consult-poll/> (last visited May 12, 2025).

⁵¹ See, e.g., Van Riper, Frank. "Ford to New York: Drop Dead". *NY Daily News*. (Oct. 30, 1975), <http://www.nydailynews.com/features/bronxisburning/battle-for-the-city/Ford-to-New-York-Drop-Dead.html> (last visited May 12, 2025)

carried out they would reduce the quality of life for millions of residents State and region-wide for years to come.

CONCLUSION

For the reasons set forth above, *amici* respectfully urge the Court to grant Plaintiffs and Intervenor-Plaintiffs' requested relief in full.

Dated: May 15, 2025

Respectfully submitted,

/s/Andrew D. Otis

Andrew D. Otis

Karen Steinberg Kennedy

KRAMER LEVIN NAFTALIS & FRANKEL
LLP

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

Aotis@kramerlevin.com

Kkenedy@kramerlevin.com

Charles S. Warren

McLAUGHLIN & STERN, LLP

260 Madison Avenue

New York, New York 10016

(212) 448-1100

CWarren@mclaughlinstern.com

Eric A. Goldstein

Mark A. Izeman

NATURAL RESOURCES DEFENSE COUNCIL

40 West 20th Street, 11th Floor

New York, New York 10011

Telephone: (212) 727-2700

Egoldstein@nrdc.org

Mizeman@nrdc.org

Attorneys for Amici Curiae

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/s/ Andrew D. Otis
Andrew D. Otis, Esq.